

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

VERTAMIN, INC.,)	
)	
Plaintiff,)	
)	1:13cv01090 (LMB/IDD)
v.)	
)	
GRAB NETWORKS, INC.,)	
)	
Defendants.)	

ORDER

Before the Court is a Report and Recommendation ("Report") issued by a magistrate judge on April 16, 2014 [Dkt. No. 16], which recommended that default judgment be entered against defendants and that plaintiff be awarded \$1,029,494 in damages, as well as pre- and post-judgment interest, based on a finding that defendants breached the terms of a written contract under which they had agreed to pay plaintiff fees based on shared advertising revenue. See Report at 12-13.

The parties were advised that any objections to the Report had to be filed within 14 days and that failure to file a timely objection waived the right to appeal the substance of the Report and any judgment based upon the Report. As of May 8, 2014, no party has filed an objection. The Court has reviewed the Report, plaintiff's motion for default judgment, and the case file. For the reasons stated below, the Court declines to adopt the Report.

The magistrate judge correctly determined that the Court has subject matter jurisdiction over this action under 28 U.S.C. § 1332, because the parties are diverse and the amount in controversy exceeds \$75,000. The Report also correctly concluded that the Court has personal jurisdiction over defendants because both of their principal places of business are in this district and that venue in this district is proper under 28 U.S.C. § 1391 for the same reason.

The record shows that defendant Grab Network Holdings, Inc., was served by private process server on September 5, 2013. [Dkt. No. 4]. Defendant Grab Networks, Inc., was served via the Virginia State Corporation Commission on September 13, 2013. [Dkt. No. 7]. Neither defendant has responded to plaintiff's Complaint.¹

Plaintiff's Complaint alleges three causes of action: breach of contract, unjust enrichment, and account stated. [Dkt. No. 1] ("Compl."). Attached to plaintiff's Complaint is a

¹ Plaintiff's Complaint alleges that Blinkx, Inc. ("Blinkx") acquired defendants' assets in August of 2013, before this action was filed and before either defendant was served. See Compl. at ¶¶ 43-45. Plaintiff also alleges that if Blinkx purchased defendants' liabilities as part of the August 2013 acquisition, Blinkx would be liable to plaintiff for defendants' contract payments or, if Blinkx did not purchase defendants' liabilities, it "may still be liable to [plaintiff] on the basis of, among other things, common law principles of successor liability." Id. at ¶ 46. Plaintiff's allegations strongly suggest that Blinkx should be joined as a defendant in this action.

copy of the agreement that forms the basis of plaintiff's claims; however, the agreement is only signed by plaintiff's representative. See Compl. at Ex. A. Without defendants' signatures on the document there appears to be no basis for a breach of contract action.

Plaintiff's Complaint alleges that defendants sent monthly reports to plaintiff, and it is upon these monthly reports that plaintiff bases its damages calculation, as detailed in paragraphs 26 to 36 of the Complaint and summarized in a "Summary of Payments Due" included in the Declaration of plaintiff's counsel attached to plaintiff's Motion for Default Judgment. See Compl. ¶¶ 26-36; Dkt. No. 13-1 at 4. Copies of these monthly reports were not attached to plaintiff's Complaint or plaintiff's Motion for Default Judgment; therefore, the Court does not have sufficient evidence of the damages sought.


In the absence of a fully executed agreement, without evidence sufficient to support an award of damages, and given evidence that a necessary party has not been joined in this action, the Court declines to adopt the Report, and it is hereby

ORDERED that plaintiff's Motion for Default Judgment will be denied unless plaintiff can establish good cause for granting the Motion and present evidence sufficient to establish its damages within 14 days.

The Clerk is directed to forward copies of this Order to counsel of record and to defendants at their addresses of record.

Entered this 8th day of May, 2014.

Alexandria, Virginia



Leonie M. Brinkema
United States District Judge